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achieve it judicially. It would seem that the best way to achieve the dual goals of equity and uniformity would be for Congress to pass pervasive legislation equalizing the legal rights and remedies for all offshore workers on fixed or submersible rigs, both within and without state territorial waters. It is hoped that the *Rodrigue* and *Huson* decisions will point out the desirability, if not the necessity, of definitively establishing a general body of law covering these workers and others injured or killed while on the continental shelf.

Alvin Michael Dufilho

RELATION OF PERSONAL INJURY AWARDS TO
THE COMMUNITY: A NEED FOR REVISION

In Louisiana, the relation of personal injury awards to the community of acquets and gains is regulated by articles 2334 and 2402 of the Civil Code. Several recent decisions in this area show a profound need for legislative revision.

In *Chambers v. Chambers*¹ judgment in district court was rendered decreeing that a sum of money obtained after a judgment of divorce, but in settlement for personal injuries sustained by the husband during the existence of his marriage, was community property and that the plaintiff wife was entitled to one half of this judgment. The husband appealed from this judgment. In overturning the decision below, the First Circuit Court of Appeal conceded that "[Civil Code] Article 2334 is the source article on the subject with respect to the husband's rights and this article is clear, unambiguous, and represents the solemn expression of the Legislative will."² That article declares: "Actions for damages resulting from offenses and quasi-offenses suffered by the husband, living separate and apart from his wife by reason of fault on her part, sufficient for separation or divorce shall be his separate property." Furthermore, "[c]ommon property is that which is acquired by husband and wife during marriage, in any manner different from that above stated."³ Nevertheless, the court stated that "our appreciation of [Civil Code] Article 2334, in light of the particular facts of this case,

1. 238 So.2d 30 (La. App. 1st Cir. 1970).

2. *Id.* at 34.

3. LA. CIV. CODE art. 2334.

does not dictate such a harsh and inequitable result as would follow the judgment now appealed."⁴ In the opinion of the court, the settlement should have been itemized to afford some basis to allocate what portion thereof was attributed to pain and suffering, disability, loss of earnings and medical expenses up to the date the husband filed a reconventional demand for divorce. This group of compensable items would fall into the community while compensation for subsequent and future pain and suffering and future loss of earnings would belong to the husband alone.

A similar case, *Alfred v. Alfred*,⁵ decided by the Third Circuit Court of Appeal less than a month before *Chambers*, reached the same result. There the court ordered that the judgment of the trial court, which stated that the personal injury damages were part of the community, be amended by limiting the community's share of the pending law suit to those damages which accrued prior to the dissolution of the community of acquets and gains.

Although the results reached by these decisions are equitable, they have no basis in codified law. Article 2334 of the Civil Code calls for damage awards for personal injury to the husband to fall into the community of acquets and gains with but one exception which does not apply to these cases.⁶ Under articles 2334 and 2402 of the Civil Code, all claims for the wife's personal injuries are her separate property; the husband's claim for personal injuries falls into the community.⁷ To gain insight into the rationale of the courts' decisions in *Chambers* and *Alfred*, it is necessary to review the history of the applicable articles.

Prior to 1902, all actions for personal injuries to either husband or wife fell into the community.⁸ Many courts seemed to base this result on the omnibus clause of article 2314 of the Code

4. *Chambers v. Chambers*, 238 So.2d 30, 34 (La. App. 1st Cir. 1970).

5. 237 So.2d 94 (La. App. 3d Cir. 1970).

6. LA. CIV. CODE art. 2334:

"Actions for damages resulting from offenses and quasi offenses suffered by the husband, living separate and apart from his wife, by reason of fault on her part, sufficient for separation or divorce shall be his separate property."

7. Previous decisions are in accord. See, e.g., *McConnell v. Travelers Indem. Co.*, 346 F.2d 219 (5th Cir. 1965); *Hollinquest v. Kansas C. So. Ry.*, 88 F. Supp. 905 (W.D.La. 1950); *Matney v. Blue Ribbon, Inc.*, 202 La. 505, 12 So.2d 253 (1942).

8. *Williams v. Pope Mfg. Co.*, 52 La. Ann. 1417, 27 So. 851 (1900); *Cooper v. Cappel*, 29 La. Ann. 213 (1877).

of 1825.⁹ One early decision stated, "By a strict interpretation of the Articles 2314 (2334), 2371 (2402) and 2374 (2405) all the effects of the spouses, not satisfactorily established to have been brought in marriage, or acquired during the marriage, by inheritance or by donation made to one or the other particularly, constitute the assets of the community, or partnership of acquets and gains."¹⁰

Article 2402 was amended by Act 68 of 1902.¹¹ In *Chambers*, the court stated that "Undoubtedly the 1902 amendment to Article 2402 had for its purpose the creation of additional rights that social conditions of the time dictated. This was the commencement of an era involving the civil 'emancipation' of married women."¹² Whatever the reason for the amendment, the judiciary from that time began to hold that suits to recover damages for personal injuries suffered by a married woman were her separate property and did not enter into the community.¹³

From the outset the Louisiana approach to the relationship of personal injuries to the community has been different from that taken by the two countries that have influenced Louisiana law the most. The Louisiana system of acquets and gains is Spanish in origin.¹⁴ Yet in the law governing the Spanish community of gains in 1803, "compensation for injuries to the partnership, whether for damage to persons or things, fell into the common fund. Damages for injuries to the person or honor of one of the spouses, however, became the separate asset of the injured person, either on the principle of acquisition by lucrative title, since the damages acquired in the injury action were not acquired by the labor and industry of the spouse, or on the principle of real subrogation, inasmuch as the damages could

9. LA. CIV. CODE art. 2314 (1825):

"Common property is that which is acquired by the husband and wife during marriage, in any manner different from that above declared." Corresponds to art. 2334 of LA. CIV. CODE. See *Succession of McKenna*, 23 La. Ann. 369 (1871).

10. *Boulingny v. Fortier*, 16 La. Ann. 209, 213 (1861).

11. "But damages resulting from personal injuries to the wife shall not form part of this community, but shall always be and remain the separate property of the wife and recoverable by herself alone; 'provided where the injuries sustained by the wife result in her death, the right to recover damages shall be as now provided for by existing law.'" Added to LA. CIV. CODE art. 2402 by La. Acts 1902, No. 68.

12. *Chambers v. Chambers*, 238 So.2d 30, 34 (La. App. 1st Cir. 1970).

13. *McConnell v. Travelers Indem. Co.*, 346 F.2d 219 (5th Cir. 1965); *Shield v. F. Johnson & Sons Co.*, 132 La. 773, 61 So. 787 (1913); *Harkness v. Louisiana & N. W. R. R.*, 110 La. 822, 34 So. 791 (1903).

14. Pugh, *The Spanish Community of Gains in 1803*, 30 LA. L. REV. 1 (1969).

have been considered as given in exchange for the injury."¹⁵ There was no "all inclusive" or "omnibus" provision to bring such awards into the community.

An "omnibus" provision such as that found in article 2334 was also lacking in the French *Code Civil* of 1804. Under the French law, "an award of indemnity [for personal injury] to one of the spouses is his separate property, whether such an award is in one cash payment or in the form of a life annuity. This indemnity represents the damage to the person of the injured and/or a decrease in his earning capacity. Only earnings, not earning capacity, are part of the community."¹⁶

Thus it appears that the omnibus clause of article 2334 was a creation of the redactors of the Civil Code. The Civil Code was amended several times¹⁷ to avoid particular results of the application of this omnibus clause, but the question of the proper allocation of sums recovered for personal injuries was never given adequate consideration as a whole.

The results reached in *Chambers* and *Alfred* indicate that a general revision of the legislation on this subject is needed. It seems rather obvious that the legislature did not envision this type situation in amending articles 2334 and 2402. Where a husband is awarded a large sum in damages for a ten-year loss of future earning capacity due to a personal injury, the fact that this sum goes into the community seems agreeable if the community of acquets and gains continues to exist, but it becomes clearly unjust when the community comes to an end a few days after the damage award is granted. Surely the drafters of these articles did not intend such an inequitable result.

A look at the present French law indicates that their handling of personal damage awards has been sound. Article 1404 of the present French Code reads: "The following are separate assets by their nature, even when they have been acquired during mar-

15. *Id.* at 10.

16. 3 PLANIOL, *CIVIL LAW TREATISE* no. 921 A (La. St. L. Inst. Transl. 1959).

17. LA. CIV. CODE art. 2402, as amended by La. Acts 1902, No. 68 to exclude the wife's personal injury awards from the community.

LA. CIV. CODE art. 2334, as amended by La. Acts 1912, No. 170 to exclude property acquired with separate funds from the community. This amendment also excluded from the community the earnings of the wife while living separate and apart from husband.

LA. CIV. CODE art. 2334, as amended by La. Acts 1920, No. 186 to grant the husband an additional, but limited, right to have his actions for damages declared his separate property.

riage: . . . actions for corporeal or moral damage, . . . and, generally, all of the things which have a personal character and all the rights which attach exclusively to the person."¹⁸

Although the present Spanish Civil Code makes no specific statement that personal damage awards are to be the separate property of the injured spouse, it does avoid encompassing them into the community fund by limiting what belongs to the conjugal partnership.¹⁹ Article 1410 of the Spanish Civil Code also provides that partnership property can be used to pay a separated debt of one of the spouses, but at the time of the liquidation of the partnership any payments made for such a cause shall be charged to such spouse.²⁰ If the individual debts paid by the community are charged against the indebted spouse when the partnership is ended, it would seem by implication that an individual asset, such as a damage award, that has gone into the community would also fall into the separate patrimony of that individual spouse when the community is terminated.

Louisiana might well profit from the French or Spanish example. No doubt the amendments to articles 2334 and 2402 of the Louisiana Civil Code were designed to alleviate some inequity that the articles in their original form created. At least the earlier form of the articles treated husband and wife equally. The present social situation between husband and wife no longer places the wife at a disadvantage; indeed, the husband

18. FRENCH CIV. CODE art. 1404 (*as amended in 1965*).

"Forment des propres par leur nature, quand même ils auraient été acquis pendant le mariage, les vêtements et linges à l'usage personnel de l'un des époux, les actions en réparation d'un dommage corporel ou moral, les créances et pensions incessibles, et, et tous les droits exclusivement attachés à la personne."

(translation by Mrs. Thomas B. Pugh.)

"The following are separate assets by their nature, even when they have been acquired during marriage: clothing and linens used personally by one of the spouses, actions for corporeal or moral damages, credits and unassignable pensions, and generally, all of the things which have a personal character and all the rights which attach exclusively to the person."

19. F. FISHER, *THE CIVIL CODE OF SPAIN WITH PHILIPPINE NOTES AND REFERENCES* art. 1401 (1947).

To the conjugal partnership belong:

1. Property acquired for a valuable consideration during the marriage at the expense of the common fund whether the acquisition is made for the partnership or for one of the spouses only;
2. Property obtained by the industry, wages or work of the spouses or either of them;
3. The fruits, income, or interest collected or accrued during the marriage derived from the partnership property, or from that which belongs separately to either of the spouses.

20. *Id.* art. 1410.

should be placed back on an equal level with the wife as far as personal injury awards are concerned. As Judge Miller points out in his dissent in *Alfred*, "The inequitable result required by the code addresses itself to legislative action—not to a court decision."²¹ The court has shown that the present wording of the Code does not facilitate justice under the particular fact situation discussed above. It is time for the legislature to correct this inequity.

John C. Miller

21. *Alfred v. Alfred*, 237 So.2d 94, 96 (La. App. 3d Cir. 1970).